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FEDERAL COMMUNICATIONS COMMISSION
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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Implementation of Sections of
the Cable Television Consumer
Protection and Competition Act
of 1992

Rate Regulation

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MM Docket No. 92-266

COMMENTS OF
THE NATIONAL CABLE TELEVISION ASSOCIATION, INC.
ON THE COMMISSION'S DATABASE

The National Cable Television Association, Inc. ("NCTA")
hereby submits the following comments regarding the database
released by the Commission on February 24 in the above-captioned
proceeding.

While our analysis of the data is not yet complete, we have
drawn several conclusions from our assessment to date:

- o First, the Commission's survey of cable rates has produced statistically reliable results in sufficient quantity to support the "benchmark" rate regulation approach proposed by NCTA, both with respect to the competitive benchmark for basic and the overall industry benchmark for non-basic tiers of service.
- o Second, while the data contains some obvious errors in misinterpretation by respondents or in compilation by the Commission, the information appears to be generally accurate. We are submitting revised data to the Commission that corrects errors that might materially affect the results when applying NCTA's proposed approach.

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- o Third, the data confirms that, adjusted for inflation, the average subscriber's per-channel rates for basic and non-basic service have not increased significantly since deregulation in 1986. Indeed, the per-channel rate for the most popular package of service offered by a cable system has actually declined, while the number of channels has significantly increased. This confirms that, in fact, most subscribers' rates did not increase unreasonably since deregulation and that only where overall rates for basic and non-basic tiers far exceed the norm should rates for "cable programming service" be deemed "unreasonable".

BACKGROUND

Section 623 of the Communications Act of 1934, as amended by the Cable Television Consumer Protection and Competition Act of 1992, embodies a new framework for regulating the rates of cable systems where such systems are not subject to "effective competition." Section 623 authorizes local franchising authorities to regulate rates for basic cable service, including the rates for equipment used to receive such service, subject to regulations to be promulgated by the Commission. Those regulations, to be adopted by April 3, 1993, are to ensure that a system's basic rates are "reasonable" and reflect what would be charged "if such cable systems were subject to effective competition."^{1/}

Rates for non-basic tiers of "cable programming service" are not subject to ongoing regulation, but the Commission is required to resolve complaints from subscribers or governmental entities

^{1/} Section 623(b)(1) (emphasis added).

that allege that such rates are "unreasonable."^{2/} The Commission must, by April 3, adopt standards and procedures for handling such complaints.

With respect to basic rates, there are several indirect ways to attempt to determine what systems might charge if they were subject to effective competition. One such approach would be to use some form of cost-of-service regulation. This approach would require the Commission and franchising authorities: (1) to identify accurately the costs incurred by a cable system in providing basic service; (2) to determine what return on invested capital would be reasonably expected by a system facing effective competition; and (3) to set rates that enable systems to recover their costs plus the appropriate return on capital. Although several parties have proposed cost-based approaches to regulating basic service, the Commission, in its Notice of Proposed Rulemaking, recognized the technical difficulties and inherent burden and unpredictability of this approach and tentatively rejected it.

Another indirect approach proposed by some parties would establish rates at the levels charged by systems before the deregulatory provisions of the Cable Communications Policy Act of 1984 took effect, as adjusted to take into account inflation and increased expenditures. This approach is based on the notion that franchising authorities, when they were allowed to regulate,

2/ Section 623(c)(1)(a).

had maintained rates at the levels that their franchisees would have charged had they been subject to effective competition. As NCTA and others showed in their comments, however, the notion that regulated rates were equivalent to "competitive" rates is belied by the sharp increases in expenditures by cable systems on programming and facilities -- and the corresponding increases in penetration -- that occurred after rates were deregulated in 1986. Regulators had clearly kept cable rates below what would have been appropriate to meet consumer demand in a competitive marketplace. And, in any event, given the increased expenditures on programming and facilities that have occurred, it would be extremely difficult to determine how to inflate an individual system's 1986 rates to the appropriate competitive levels for 1993 and beyond.

For these reasons, as NCTA maintained in its comments, a more workable, and more accurate, approach to identifying the basic rates that would be charged by systems if they were subject to effective competition would be to adopt a benchmark approach -- first identified by the Commission in its Notice^{3/}-- based on the basic rates charged by systems that actually are subject to effective competition. Ideally, as the Commission itself noted,

[i]f sufficient data were available, regression analysis or some other statistical technique could be used to determine how rates varied with such characteristics affecting costs as homes passed

3/ Notice, para. 41.

per mile, number of channels, number of subscribers, the relative mix of buried and overhead cable, and the other factors described in Section 623(b).^{4/}

But, as NCTA pointed out, there might not be a sufficient number of systems facing effective competition to yield significant results from that sort of regression analysis. Still, "this would not mean ... that the rates of systems facing effective competition could not be used as a basis for establishing competitive benchmarks."^{5/} An appendix to NCTA's initial comments, prepared by Economists Incorporated, showed how the basic rates of even a relatively small number of competitive systems could be compared with the basic rates of all systems to establish statistically meaningful benchmarks.^{6/}

By collecting rate and other information from systems not subject to effective competition as well as from systems subject to effective competition, the Commission made such a benchmark approach for basic rate regulation feasible -- provided that the

4/ Id., para. 42.

5/ NCTA Comments at 18.

6/ See B. Owen, B. Baumann & H. Furchtgott-Roth, Cable Rate Regulation; A Multi-Stage Benchmark Approach 10-15 (Jan. 27, 1993).

Any benchmark approach based on rates of systems subject to effective competition would, as NCTA explained, have to take into account in some manner the fact that, as the result of short-term price wars and "greenmail" by cable overbuilders, the rates of such systems "may be significantly below a competitive level ... or at least below a level that permits desirable investment in improved programming and facilities." NCTA Comments at 18.

quantity and quality of the survey responses was sufficient. Moreover, by also surveying non-competitive systems -- not merely those subject to effective competition -- the Commission also obtained data that could be used to determine whether a system's non-basic rates are unreasonable. As we showed in our comments, what Congress meant by "unreasonable" rates for non-basic tiers was something very different from simply the flip-side of what it meant by "reasonable" basic rates. While "reasonable" basic rates are those that would be charged by systems subject to effective competition,

Section 623(c)'s list of criteria for non-basic regulatory standards is almost completely different -- and, unlike the list of basic rate standards, it directs the Commission to consider rates for all similarly situated cable systems, not just systems subject to effective competition.

Unreasonable rates for this purpose, as we showed, are those that far exceed the norm for similarly situated systems. The data sought by the Commission would make it possible to determine the median rates and per-subscriber revenues for systems sharing similar key characteristics and to establish benchmarks for such systems at levels sufficiently in excess of the median.

7/ NCTA Reply Comments at 44 (emphasis in original).

WHAT THE COMMISSION'S DATA SHOWS

The Commission has now received and processed its survey responses and has made the data available to the public. Because its rulemaking proceeding must be completed in such a short time frame, the Commission has, in turn, provided only a very short time period for comment on the data. NCTA and Economists Incorporated have been analyzing and processing the data since it was made available, and our analysis is not yet complete. Nevertheless, as the attached report of Economists Incorporated^{8/} explains, several key points are already evident from the data.

First, with respect to the quantity of the data, it is clear that the survey response from systems subject to effective competition as well as from those not subject to effective competition is "wholly adequate to support the methodology proposed initially by NCTA."^{9/} According to Economists Incorporated, "[t]he survey return rate was high, and the industry random sample appears to have been designed in a statistically sound and reliable manner, at least for the purposes proposed by NCTA."^{10/} And, while some parties had asserted in their comments that there

8/ Economists Incorporated, Preliminary Analysis of FCC Cable Television Survey Data (March 8, 1993).

9/ Id. at 1.

10/ Id. However, "[w]ithout knowing what alternative analyses might be attempted, [Economists Incorporated] can have no view at present as to the reliability of the original or revised survey data for any purpose other than the one we have proposed." Id. at 2.

were not enough systems subject to effective competition to provide a basis for determining basic rate benchmarks, "the survey turned up more than 100 effectively competitive systems as defined in the statute, more than enough to estimate reliably the difference between 'competitive' basic rates and the rates to be regulated, holding other relevant factors constant."^{11/}

Second, with respect to the quality of the data, while there are clear errors, the information collected by the Commission appears to be generally accurate. We have identified some errors that seem to be attributable either to misinterpretation of questions on the part of the respondents or to mechanical errors in the compilation of the data, and we are submitting a data set with corrected information where errors have been identified. Only those errors of sufficient magnitude to "affect in any important way the outcome of an analysis conducted along the lines suggested in [NCTA's] initial comments"^{12/} have been identified and corrected. The attached report of Economists Incorporated describes the procedures used to check the database and to correct errors.^{13/}

^{11/} Id. (emphasis added).

^{12/} Id.

^{13/} Id. at 2-6.

Third, the data confirms that, adjusted for inflation, the average per-channel, per-subscriber rates for basic and non-basic tiers of service have not increased significantly since rates were deregulated in 1986. Economists Incorporated's analysis of the data shows that, for the lowest-priced available tier of basic service, the average subscriber in 1986 paid 45 cents per-channel and receive 25.0 channels. In October 1992, the average subscriber's rate had increased to 61 cents -- a nominal increase of 35 percent. But when adjusted by the Consumer Price Index, the 1986 rate of 45 cents is equivalent to 58 cents in October 1992. Thus, in real terms, the average per-channel per-subscriber rates increased only five percent, from 58 cents to 61 cents, for a slightly increased number of channels.^{14/}

Indeed, per-channel rates for the most popular package of optional service -- the package of basic and optional services purchased by the greatest number of subscribers in a system -- actually declined in real terms since 1986, while the number of channels increased. The average subscriber paid 43 cents per-channel in 1986 for a package that contained 32.5 channels. Adjusted to October 1992 dollars, this is equivalent to 55 cents per-channel. In October 1992, the average rate had declined by 5.5 percent to 52 cents per-channel, while the average number of channels had increased by 33 percent to 43.3.^{15/}

14/ Id. at 6.

15/ Id. at 7.

This aggregate data underscores why only rates for non-basic tiers that far exceed the norm should be viewed as "unreasonable" for purposes of rate complaints. Most subscribers' rates did not increase unreasonably since deregulation. Indeed, in real terms, the average subscriber's per-channel rate went down.

We have not yet been able to complete the application of regression analysis to create an appropriate matrix of rate distributions among similarly situated systems and to determine, for purposes of basic rate benchmarks, the appropriate competitive adjustment factor. What we can conclude, however, is that the methodology for determining such benchmarks, whether applied by NCTA or by the Commission, is statistically sound and, using the data collected by the Commission, can yield reliable results.

Respectfully submitted

NATIONAL CABLE TELEVISION
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**PRELIMINARY ANALYSIS OF FCC CABLE TELEVISION
SURVEY DATA**

MARCH 8, 1993

ECONOMISTS INCORPORATED
WASHINGTON

PRELIMINARY ANALYSIS OF FCC CABLE TELEVISION SURVEY DATA

In this paper we discuss preliminarily two issues relating to the recent FCC survey of cable television rates: (1) the reliability of the FCC survey data as a basis for establishing benchmark rates for cable television service using the methodology initially proposed by NCTA and (2) the evidence provided by the survey data bearing on whether or not cable television rates have increased since 1986.

I. THE STATISTICAL RELIABILITY OF THE SURVEY

In its initial comments in this proceeding, NCTA and Economists Incorporated (EI) described in considerable detail a benchmark approach to cable rate regulation. NCTA proposed that the FCC survey the industry in order to establish a baseline for rates as of the date of enactment of the Cable Act. Further, NCTA proposed that the survey could be used to establish a "competitive adjustment" applicable to basic rates to take into account the difference between rates charged by franchisees defined as "effectively competitive" under the Act, and those to be regulated. Finally, NCTA proposed an outlier approach to the regulation of cable programming services, taking into account all regulated subscriber revenues.

Based on preliminary analysis, the FCC survey results appear wholly adequate to support the methodology proposed initially by NCTA. The survey return rate was high, and the industry random sample appears to have been designed in a statistically sound and reliable manner, at least for the purposes proposed by NCTA. The process of checking for and correcting errors in the survey data, while not complete, has progressed sufficiently to permit the survey to be used in setting benchmark rates.

Perhaps most important, the survey turned up more than 100 effectively competitive systems as defined in the statute, more than enough to estimate reliably the difference between “competitive” basic rates and the rates to be regulated, holding other relevant factors constant. In short, the methods and approaches described in detail in NCTA’s comments appear to be viable on the basis of the FCC survey results.

In any survey of this type respondents sometimes misinterpret questions or err in their responses. Correction of such errors, as well as identification of mechanical errors in the compilation of the data are a routine part of survey research. Given the extraordinary schedule in this proceeding, there has been very little time for such corrections. NCTA and EI have conducted an intensive effort to identify and to correct those data errors that might affect in any important way the outcome of an analysis conducted along the lines suggested in its initial comments. This effort is described below. The Commission will be supplied with a corrected data set (and a list of corrections) reflecting those errors identified by NCTA.

It is important to emphasize that it has not been possible to identify and to correct possible errors that, if they exist, would not materially affect the analysis conducted in the particular manner advocated by NCTA. Without knowing what alternative analyses might be attempted, EI can have no view at present as to the reliability of the original or revised survey data for any purpose other than the one we have proposed.

Data Checking Procedure

The process of checking for and correcting errors in the FCC survey data relied on the following general considerations. First, the proposed approach to benchmark regulation of cable rates relies on regression analyses for two purposes: (a) to identify the ef-

fect on basic rates of being an “effectively competitive” franchise, holding other things equal; and (b) to calibrate the benchmark rate tables, holding constant number of channels and percentage of channels devoted to satellite signals. Second, the NCTA approach to regulation of cable programming services relies on an outlier approach in which extreme values of significant factors are held constant. For all of these purposes, errors that are small in relationship to the mean franchise, or that involve variables that do not enter the regression equations, or that involve franchises that are not used as part of the random sample are unlikely to affect the benchmark rates. On the other hand, errors that produce extreme values of variables that are used in the regression or in the outlier analysis, or that involve the “effectively competitive” franchises, may affect the benchmark rates. Accordingly, given the schedule constraints in this proceeding, NCTA and EI concentrated on identifying and correcting possible errors in the data that might have affected the benchmark rates calculated in the way it proposes. There may or may not be other errors that would affect the outcome of analyses conducted in a different manner or for a different purpose.

Preliminary procedure

EI transferred the FCC data base to Macintosh Excel and Foxbase files, sorting and spot checking both data files to verify that the transfer had been accomplished without error. The two files were verified by comparison to each other and to the original dBase file in IBM format.

Limitation of checking to certain observations

In order to limit the number of potential systems that would have to be contacted, a subset of the FCC database that contained only the following franchises/observations was created:

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2. Compared field S7_1TS to field S7_2TS and field S7_3TS to verify that the number of subscribers receiving basic service was greater than or equal to the number of subscribers receiving second or third tier service. Instances were also identified in which the number of subscribers to channel tiers was not reported.
3. Compared field S5_HHSUB to field S7_1TS to verify that they are equal to one another. Both fields asked the respondent to supply the number of subscribers to the basic tier of service offered by the system.
4. Compared field S7_1TTOT to the sum of fields S7_1LTV, S7_1DTV, S7_1SAT, S7_1PA and S7_1T0, to verify that the total number of channels reported on the basic tier was equal to the sum of channel types on that tier. The procedure was repeated for similar fields on the second and third tiers.
5. Compared field S7_TOTAC to the sum of fields S7_TOTAT, S7_TOTA1, S7_TOTA2, S7_TOTOC, S7_TOTPA, S7_TOTPP and S7_OAC, to verify that the number of channels available on the system was the same in both fields.
6. Examined rates charged for the various tiers of service and ancillary services listed on schedule 7.

Correction procedure

Using the information from the above review procedure, EI generated lists of systems that appeared to have inconsistent or extreme values for certain variables. For the calculated ancillary services ratios, a "cutoff" level was determined above which telephone calls were made to the respondent systems to verify the data. The cutoff ratios were: installations (60%), disconnections

(70%), reconnections (55%), converter rentals (100%), remote rentals (100%), additional outlets (100%), and tier changes (100%).

The Cable Factbook was used to identify the cable systems and to obtain a telephone number for those franchises reporting data potentially in error. A majority of the systems identified were successfully contacted and the data verified or corrected. In the case of respondents that could not be reached, the original data were left unaltered.

II. CHANGES IN RATES SINCE 1986

The FCC survey asked respondents to report on their rates as of 1986 in a manner comparable to their reported 1992 rates. Many but not all respondents were able to supply 1986 data. Based on an initial analysis of these data for first franchise areas (which, both for 1986 and for 1992, are unlikely to be affected significantly by the types of errors discussed above) EI has reached the following conclusion: real per-channel rates have remained approximately constant or have decreased since 1986. The analysis is summarized in the two tables below.

TABLE 1: BASIC SERVICE ("LOWEST-PRICED TIER")
Rates Per Subscriber-Weighted Channel
CPI-deflated 1992\$

Year	Nominal rates (cents)	Real rates (cents)	Number of channels
1986	45	58	25.0
1992	61	61	25.5

TABLE 2: BASIC SERVICE ("MOST POPULAR TIER")

Rates Per Subscriber-Weighted Channel

CPI-deflated 1992\$

Year	Nominal rates (cents)	Real rates (cents)	Number of channels
1986	43	55	32.5
1992	52	52	43.3

Table 1 shows that real (inflation-adjusted) rates per channel for the lowest-priced tier of service ("basic service") were approximately the same in 1992 (61¢) as in 1986 (58¢). The number of channels on that tier also remained approximately the same. These averages were computed by weighting each reported franchise rate by the number of subscribers in that franchise area. It is not appropriate simply to average the survey rates because small systems with relatively few subscribers are in that case given the same weight as very large franchises. The 1986 rates were inflated to 1992 dollars using the Consumer Price Index.

Table 2 reflects the same analysis for the most popular tier—the tier with the most subscribers. This analysis shows that inflation-adjusted rates per channel for the most popular service tier have *declined* 5.5% since 1986. Meanwhile, the number of channels on the most popular tier has *increased* 33%.

1. First franchises in the random sample (R) or in the top 100 systems (T).
2. Second franchises in the random sample (R) or in the top 100 systems (T) that were categorized by the FCC as a competitive franchise following the FCC's review of the completed surveys.
3. First or second franchises in the sample of overbuild systems (O) or in the sample of low penetration systems (S) that were categorized by the FCC as competitive franchises following the FCC's review of the completed surveys.

Limitation of checking to certain variables

As noted above, given the limited time, data verification was restricted to those variables that are integral to the rate setting methodology proposed by NCTA. At this time other possible errors have not been checked. For example, while there have been reports in the trade press of unrealistically high reported values of total revenues per subscriber, and a few such outliers do exist, no attempt has been made to correct any of the revenue data. (Revenue data in the survey relate to the system level, whereas all analysis of the FCC data conducted by NCTA has been at the franchise level.)

In order to identify responses that appeared to have inconsistent or extreme values of certain variables, EI performed the following analyses:

1. Divided variable fields S7_FYNIP, S7_FYNDI, S7_FYNRE, S7_FYACB, S7_FYARC, S7_FYAAO, and S7_FYATC by field S7_1TS to obtain the ratio of the number of ancillary services to the number of subscribers receiving basic service.